

Notes from the Caltrans Statewide PA Teleconference 10-14-04

Introduction

Participants from Headquarters (HQ) included: Greg King, Dorene Clement, Anmarie Medin, Germaine Belanger, Bob Pavlik, Jill Hupp, Margaret Buss and (by phone) Glenn Gmoser.

Case studies & Questions and Answers

This was a thematic meeting on the subject of Screened Undertakings.

Q. Jill presented a case study in which there is an undertaking that by nature of the activity is “screenable.” The PQS, however, concludes that the project is probably on fill, but does an XPI (or something close to an XPI) because there is a recorded archaeological site nearby. Can this be screened?

A. Glenn: We don’t want to spend a lot of time “downgrading” our documents. It’s more appropriate in this case to do an investigation and document your findings in a report. The level of effort is essentially the same whether you are doing a screening memo or a “no findings” HPSR. A “no findings” report doesn’t have to be a long document, and we don’t consult SHPO. If there’s nothing there, we keep the document in-house.

Q. Jill: Another common situation is again, the activity itself is “screenable” but there is a site recorded in 1954 (for example) that may extend into the project area; or the exact site location is unknown, but it’s in the vicinity. In any case, the PQS concludes that it has probably since been destroyed. Can this be screened?

A. Glenn: This is situational. The site may be a mile away. You could just document the research you did in a screening memo. Or, you may not know where it is and need to do a little more work to find out. In that case, you would document your identification effort in an HPSR. Remember though, unless you find a property that requires evaluation, the report doesn’t go to SHPO.

Q: We have a truck-climbing lane project that involves putting in a left turn lane and acquiring an additional 40-foot right of way. There are no resources in the area. It was originally done as a “negative” HPSR, but under the PA could we screen this?

A. Glenn: No, because adding a truck climbing lane isn’t one of the classes of screened undertakings. But if there are no resources, you are still doing a “negative” HPSR, and consultation with SHPO is not required.

Q. We made a point of selling the PA to our management based on screening saving us a lot of time. It’s hard to explain that we can’t screen everything and still say that the PA saves time.

A. Margaret: It’s important not to abuse the screening process. Also, the PA *does* save a lot of time in not having to have an FHWA TE sign the “negative” HPSR as they did before the PA.

Glenn: Sometimes screening will take more than a day to do; you may need to invest a little time. It will depend on the area and the project.

Margaret: When deciding about whether to screen a project bear in mind if there are any potential historic properties it is not screenable. If you have no properties, then is the project on the list of 29 classes of screened activities?

D6: Remember, just because it is on the list doesn’t mean it can always be screened.

Dorene: The list is of things we are *allowed* to screen – not *required* to. It's permissible.

Q. I have a project where they are installing flashing beacons. There are 3 resources in the r/w, but the project will not affect them and I don't need any conditions to assure that. Screenable?

A. Glenn: Again, it depends on proximity. You would have to look at where the resources are in relation to the work – will there be any trenching nearby for example? Another thing - if you are making an evaluation of effect, even if it "no effect," that's different than no potential to affect. You may not need to impose conditions, but this is a signal that it should be bumped up to an HPSR. Do a report and then figure out what the affect is. If there is no effect, then document it as No Historic Properties Affected. Be careful about jumping to effects prematurely. In this situation the project has potential to affect historic properties, so you can't screen it.

D5: Actually, it depends on his comfort level. The screening process allows the professional to make a judgment call. If he finds that screening is appropriate, then a memo is sufficient.

Glenn: Just be careful that things don't collapse on you after you've moved them on.

Q. Can you clarify whether the ability to screen depends on the presence of resources?

Glenn: It depends on whether they fall into what you perceive to be the APE.

D6: As discussed last time, there can be confusion about the project description, or you may not be getting a full description.

D5: Remember you can mix and match activities as long as they are all on the list.

Margaret: I wanted to clarify that for a screening, you aren't setting a formal "APE" but you would have a "virtual" one in your head. There are also political considerations in deciding whether to screen or not. The #1 concern of the Tribes regarding the PA was screening. So, you might want to elevate it to an HPSR if there may be Native American concerns.

Q. Regarding a "virtual" APE, I often attach a map with my screening memo. It's a way of getting the PM to commit that this is what you are agreeing to screen. Should I *not* be doing this?

A. Margaret: Attaching a map is a great idea! It just isn't officially an "APE map" – but it can be project plans, or just a map showing the project area so you know what you considered in your screening decision.

Q. Could you confirm: we cannot screen a project if it consists of work on Category 5 bridges more than 50 years old?

A. Jill: True.

Earlier this year, Dorene, Glenn and district personnel conducted statewide PA consistency field reviews. Dorene shared the team's observations and recommendations regarding the screening process, from the *draft* letter report on the field reviews (see attached). When finalized, the report will go to FHWA, SHPO and the districts. Overall, the team found that we are complying with the screening process. The following discussion items were raised:

"New Consultation"

Q. You say that when we have a project that has completed 106, then for whatever reason more 106 is later necessary, FHWA wants us to call this "new consultation?" Does that mean we can't screen the work? Would it be treated as we would a supplemental report? How would we word the transmittal letter?

A. Glenn & Dorene: “New consultation” is a confusing term, because the project change may not require consultation with SHPO. If the activity qualifies as screenable, you can screen it. It’s really a new undertaking, as far as SHPO and 106 compliance are concerned, but FHWA doesn’t want to call it that. If the project changes didn’t result in identification of any new properties that required evaluation, then you could do a “negative” HPSR. If there were new properties that required evaluation, then you would consult SHPO, but you can do it under the PA. The guidelines for doing a supplemental, as far as how much documentation to include, are generally applicable here.

Jill: This gets back to the grandfathering issue discussed at the last teleconference (see notes for July 22, 2004). SHPO’s concern was about not switching processes in the middle of consultation. For example, we couldn’t initiate consultation under 36 CFR 800, and then consult on effects under the PA. We have to close out consultation under the original process. But SHPO said if 106 was concluded and the project changes, we’d handle it under the PA. So, if consultation with the SHPO is required, we’d say Caltrans is initiating consultation in the transmittal.

Relinquishments

Q. Regarding what you said about right of way relinquishments not being handled as screened undertakings, aren’t relinquishments CEQA actions only?

A. Margaret: FHWA used to say relinquishments were never federal actions, now they say there are some situations where they might be. They are definitely involved if the project is still not complete – e.g., their funding has helped purchase right of way that, before or during construction, not to be needed for the project after all. FHWA is supposed to provide us with guidance about all the scenarios in which they might still be involved in a relinquishment. So, until we get clarification, we’ll continue to treat them as CEQA only (except, as noted above, for a project not completed). Regardless, relinquishments are not screenable because the activity is not one of the classes of screened undertakings.

Q. Why aren’t relinquishments screenable? What if it *is* CEQA only? The EH Vol II says we can use the PA attachments for state only projects.

A. Margaret: You can screen state projects using the attachment, as a general guide to minor projects, even though the PA doesn’t apply to state-only projects. Relinquishments are not on the Attachment 2 list because FHWA did not consider them a federal undertaking. However, since how we handle CEQA is largely self-defined – you can make a decision that a project doesn’t require studies or documentation and are not limited to the list. Just don’t call it a “screened undertaking” since that is a term for federal actions only.

Including a discovery provision in screening memos

Q. You said that we should *not* include a statement about potential for discoveries in the screening memo?

A. Dorene: If you really feel that the area is sensitive and there is potential for discoveries, then the project shouldn’t be screened – you would do a document.

Annual field reviews

Regarding the report’s suggestion that further annual field reviews of screening files be conducted, some districts agreed that this was a good idea, and noted that broadcasting to project management in advance that these reviews would occur might deflect some of the pressure cultural gets to screen projects. Other districts said that they are not being pressured, and felt that the districts

could do a sufficient job of maintaining their own files. It was generally agreed, however, that the visits could benefit the greater good by helping to bring awareness to all of controversial issues with implications for statewide consistency.

Greg: We would like to know if you are being pressured to screen things despite your better judgment. Some mid-level managers may not understand the risk to our PA, but our management takes this sort of thing very seriously. We may decide to do selective visits, such as to those we've heard are having the problem. We want to work with you - just as we had district staff participating in the original field reviews – rather than it being HQ mandated.

Germaine: One of the benefits to establishing the PA was established to establish statewide consistency. That's a HQ function. We'll gain a lot of knowledge when HQ releases the report.

Greg: Hans Kreutzberg said that the main benefit of the PA to the SHPO is statewide consistency in how 106 is applied throughout the districts.

Jennifer Darcangelo (D4): I participated in the PA consistency field reviews, and it was very helpful to go to other districts and hear what they are doing.

Suggestions for other screenable activities

Greg: As you're in the field and identify activities not on the list that you think should be, let us know. We would like to have that information for consideration if the PA is amended in the future.

D4: We suggest amending #19 to allow screening of any work on a Category 5 bridge, even if it is more than 50 years old.

Jill: Yes - the 50 year qualifier was included because at the time, our bridge survey was not completed, so there was potential for Category 5 bridges to be re-evaluated and possibly elevated to eligible. Once the survey is done, it probably would be reasonable to change that wording.

Glenn: We also have to consider what other resources are in the project area. There may be more to the project than just work on the bridge itself.

D5: What about adding call boxes? This might fall under adding utilities, but it would be good to have it specifically listed.

Margaret: We also want to know about items on the list now that you find maybe shouldn't be.

Wrap Up

Jill: Just a couple minor items - if you aren't sending your submittals to SHPO via certified mail, you may want to consider doing that. A certified mail return receipt is one of the ways the PA lists for establishing the start of the 30 day time clock (just allow at least a day for it to reach OHP from the mailroom), and you would know that it got there without having to contact your 106 Coordinator. Also, the OHP clerical staff asked that if we are including more than one project submittal in an envelope, could we make this very obvious – such as a post-it note saying there are multiple submittals enclosed. Otherwise, even though each would have its own transmittal memo, she might not notice and could accidentally log them in as one submittal.

Anmarie: A couple more minor items – we are going to be sending out updated PA training manuals, because the training evolved as we went along and the modules changed (hopefully for the better) so some of you didn't benefit from the later materials. We're also updating the HPSR

short form, and have permission from Gloria to distribute it as non-write protected. So, if you have any suggestions for changes, please email them to me.

Jill: I did pass along all the comments I've gotten from the districts to Anmarie and Gloria, but you might want to resubmit them directly to Anmarie to make sure they are captured.

Anmarie: Also, FHWA asked us to remind folks that FHWA is still supposed to notify ACHP when we have an adverse effect and sends a copy of the MOA to ACHP prior to final approval of the project whether ACHP participated in the consultation or not. We can help FHWA out by reminding them of this responsibility.

Greg: North Region has asked us to do a presentation on our best practices, and would be pleased if you wanted to share any that you've developed. You may have done things internally that worked very well; we're interested in hearing about those. We may eventually publish the best practices on our website.

It was suggested that APEs might be a good topic of discussion for the next teleconference. You can send any questions or ideas for additional topics for discussion to your 106 Coordinator anytime.

Headquarters Action Items

Send updated PA training materials – Anmarie

Update HPSR form and redistribute - Anmarie